

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE	EFFECTIVE DATE 07/21/08	NUMBER 05.03.116
SUBJECT PRISONERS' ACCESS TO THE COURTS	SUPERSEDES 05.03.116 (01/01/08)	
	AUTHORITY MCL 791.203; Administrative Rule 791.6603	
	ACA STANDARDS 4-4274; 4-4275; 2-CO-3C-01; 4-ACRS-6A-01; 4-ACRS-6A-02	
	PAGE 1 OF 4	

POLICY STATEMENT:

Prisoners are permitted to exercise their constitutional right of access to the courts subject to legitimate penological interests.

POLICY:

- A. Prisoners have a constitutional right of access to the courts which may not be arbitrarily impeded. No retaliation may be taken against a prisoner who has filed a lawsuit or is pursuing litigation. A copy of a lawsuit which a prisoner has filed against the Department or its employees, or information on such a lawsuit, shall not be placed in that prisoner's commitment files.

ACCESS TO ATTORNEYS AND THEIR REPRESENTATIVES: CONFIDENTIALITY

- B. A prisoner shall be allowed visits with an attorney, or representative acting on the attorney's behalf, on official business with the prisoner in accordance with PD 05.03.140 "Prisoner Visiting". Authorized representatives include paralegals, law students, and special investigators. If requested by the attorney, staff shall arrange a location where the visit can be conducted without being overheard by staff or other prisoners. Whenever possible, such a request should be made in advance of the visit to assist in planning for a private room or other area.
- C. Prisoners in general population or protective segregation shall be allowed reasonable telephone access to an attorney as set forth in PD 05.03.130 "Prisoner Telephone Use". Additional calls, and calls outside normal hours, may be authorized by the Warden or his/her designee if requested by the attorney. A prisoner in administrative, punitive, or temporary segregation shall be allowed telephone access to an attorney only as set forth in PD 04.05.120 "Segregation Standards". Telephone calls between prisoners and attorneys which are not part of a prisoner's regular telephone usage shall be placed by a staff member but shall not be listened to by staff.
- D. Prisoners shall be allowed to carry on confidential and uncensored correspondence with an attorney, the courts, and legitimate legal assistance organizations as set forth in PD 05.03.118 "Prisoner Mail".
- E. Prisoners are authorized to possess legal materials as set forth in PD 04.07.112 "Prisoner Personal Property". Legal papers which are in a prisoner's personal property may be searched for contraband but shall not be read unless there is reasonable cause to believe they are not truly legal correspondence.

PROVISION OF LEGAL CORRESPONDENCE MATERIAL

- F. All prisoners must be provided means for filing a lawsuit and corresponding with attorneys. Writing materials, envelopes, and postage are available for purchase in prisoner stores as set forth in PD 04.02.130 "Prisoner Store". These items also are available to prisoners who do not have sufficient funds to purchase the items as set forth in PD 05.03.118 "Prisoner Mail". A prisoner who is in segregation may be deprived of writing materials if they are being used in a manner which presents a serious threat to order and security in accordance with PD 04.05.120 "Segregation Standards".

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 07/21/08	NUMBER 05.03.116	PAGE 2 OF 4
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NOTARY SERVICES

- G. All prisoners shall have access to a notary public. All non-custody housing unit staff, librarians, and library assistants/library technicians are required to be notaries public and to notarize prisoners' signatures on legal documents if requested. There is a charge of \$1.00 for each document notarized. Funds for this service shall be loaned by the Prisoner Benefit Fund to prisoners who lack sufficient funds to pay for this service; funds collected to repay the loan shall be returned to the PBF which loaned the funds. Notarized signatures are not required on Department documents and personal letters; therefore, requests to notarize such items may be denied even if the prisoner claims they are legal documents. Prisoners in segregation shall be provided notary services within two business days of making a request for such services.
- H. When notarizing a document, staff are only responsible for witnessing the prisoner's signature, verifying that the prisoner is the person who is signing the document, and that the name signed is the same as that which appears on the documents. Staff are not responsible for the written content of documents they notarize; however, this does not mean that staff must ignore the content prior to notarizing the document. Staff may conduct a cursory review of the document to ensure that it is not something that would ordinarily be confiscated as posing a threat to the custody and security of the institution if found in the prisoner's possession (e.g., an escape plan; threat to physically harm another). If such a concern exists after review, staff should contact appropriate supervisory staff for direction on how to proceed. Staff should not refuse to notarize a document solely because they disagree with its content or because they believe it includes inaccurate statements about staff, prisoners, or others.
- I. State law prohibits prisoners from serving as notaries public.

LEGAL PROPERTY

- J. Prisoners shall be permitted to possess their personal legal property as defined and set forth in PD 04.07.112 "Prisoner Personal Property" and, if in segregation, PD 04.05.120 "Segregation Standards". If a prisoner's property exceeds allowable limits due to items claimed to be legal property, a hearing shall be conducted in accordance with PD 04.07.112 and OP 04.07.112 "Excess Legal Property Hearings" to determine if the items are legal property and thus allowed to be possessed.

LEGAL PHOTOCOPYING SERVICES

- K. Prisoners shall be provided photocopying services to obtain copies of items needed for legal research. Prisoners also shall be provided photocopying services to obtain copies of documents in their possession, or available to them in the law library, which are necessary for the prisoner to file with a court or serve on a party to a lawsuit. Prisoners shall use the Legal Photocopy Disbursement Authorization form (CSJ-602) to request photocopying; the forms shall be available to prisoners in the housing unit and institutional law libraries. A fee of 10 cents shall be charged for each page copied.
- L. Prisoners who lack sufficient funds to pay for copies of documents in their possession, or available to them in the law library, which are necessary for the prisoner to file with the court or serve on a party to a lawsuit shall be loaned funds to pay for the copying. Funds shall not be loaned, however, for copying a document which can otherwise be reproduced by the prisoner, except if the document is notarized or was created for the prisoner through the Legal Writer Program and as otherwise required by court order for service of a federal lawsuit.
- M. A prisoner may be required to present documentation (e.g., court rule, copy of the pleading) to show that requested copies are necessary. If the prisoner presents his/her personal legal materials, staff shall read only those portions that are necessary to determine whether the copies will be provided and, if applicable, whether funds will be loaned. If a loan is approved, it shall be considered an institutional debt and collected as set forth in PD 04.02.105 "Prisoner Funds".

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 07/21/08	NUMBER 05.03.116	PAGE 3 OF 4
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LEGAL ASSISTANCE

- N. In addition to legal assistance available in the community from attorneys and legal service organizations, prisoners shall have access to legal research materials through law libraries and provided legal assistance through the Legal Writer Program as set forth below. To avoid exploitation of prisoners by other prisoners, prisoners are prohibited from directly or indirectly charging or receiving compensation in any form, including in money, goods, or services, for providing legal services to, or obtaining legal services from, another prisoner.

LAW LIBRARIES

- O. Prisoners shall have access to law libraries to conduct legal research as set forth in PD 05.03.115 "Law Libraries". Legal research materials beyond that available in the law library shall be available to prisoners as set forth in PD 05.03.115.

LEGAL WRITER PROGRAM

- P. The Legal Writer Program provides eligible prisoners in Correctional Facilities Administration (CFA) institutions with legal assistance on matters relating to their criminal conviction or conditions of confinement. Only prisoners not represented by counsel who are unable to effectively help themselves by using the law library or other available legal resources are eligible to receive Legal Writer Program services. Legal Writer Program assistance shall be provided through prisoners at the institution who are assigned to the Legal Writer Program and have successfully completed all required training ("legal writers"). A staff person designated by the Warden shall provide oversight and supervision of the Legal Writer Program and supervise the legal writers. There is no attorney-client privilege between the legal writers and the prisoner receiving the assistance.
- Q. A prisoner is eligible to receive Legal Writer Program services if s/he meets any of the following criteria:
1. Does not have a verified GED or high school diploma.
 2. Does not speak, read, or write English.
 3. Has a documented physical or mental impairment or a learning disability which may affect his/her ability to use the law library to prepare and file a legible and coherent pleading.
 4. Is undergoing reception center processing.
 5. Is housed in any form of segregation other than temporary segregation.
 6. Is housed in a Department operated inpatient medical unit.
- R. An on-site Legal Writer Program shall be available only at institutions identified by the CFA Deputy Director. All prisoners requesting assistance from the Legal Writer Program shall be screened by a staff person designated by the Warden to determine the prisoner's eligibility. If a prisoner is determined to be eligible for the assistance, staff designated by the Warden shall make arrangements for the prisoner to have access to a legal writer. If the facility does not have an on-site Legal Writer Program, this may include transferring the prisoner to a facility which does have an on-site program.
- S. After meeting with the prisoner, the legal writer will prepare all necessary pleadings, motions, and other documents for the prisoner under the direction of off-site private attorneys under contract with the Department. If the prisoner receiving the assistance is dissatisfied with the quality of the documents received, s/he may address the matter with the legal writer; however, the Legal Writer Program does not operate as a "typing service" for the prisoner and changes will not be made solely based on the prisoner's personal preferences (e.g., different formatting; phrasing of legal argument). The prisoner receiving the assistance will be responsible for obtaining required copies of the documents and mailing

DOCUMENT TYPE POLICY DIRECTIVE	EFFECTIVE DATE 07/21/08	NUMBER 05.03.116	PAGE 4 OF 4
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the documents to the courts or other parties. A prisoner who lacks adequate funds to pay for photocopying or postage shall be loaned the funds as set forth in PD 05.03.118 "Prisoner Mail".

- T. The CFA Deputy Director shall ensure that a manual regarding the Legal Writer Program is maintained and is available for use by staff involved in the Legal Writer Program. The manual shall specifically include information on the oversight and supervision that is to be provided by staff at institutions that have an on-site Legal Writer Program.

PROCEDURES

- U. Wardens shall ensure that operating procedures are developed as necessary to implement requirements set forth in this policy directive; this shall be completed within 60 calendar days after the effective date of the policy directive. This requirement includes ensuring that their existing procedures are revised or rescinded, as appropriate, if inconsistent with policy requirements or no longer needed. Facility procedures shall not conflict with procedures issued by the Director.

AUDIT ELEMENTS

- V. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens with self audit of this policy pursuant to PD 01.05.100 "Self Audit of Policies and Procedures".

APPROVED: PLC 06/24/08